NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

KEV & COOPER LIMITED LIABILITY COMPANY, Plaintiff, v. GLADWELL EDUCATION LLC, Defendant.	Civil Action No. 22-2029 (SDW) (JRA) **WHEREAS OPINION** April 24, 2023

THIS MATTER having come before this Court upon Defendant Gladwell Education LLC's ("Defendant") Motion for Reconsideration (D.E. 24) filed in connection with this Court's February 27, 2023 Opinion (D.E. 20, "Opinion") and Order (D.E. 21, "Order") denying Defendant's Motion to Dismiss (D.E. 11); and

WHEREAS in its Opinion,[1] this Court explained that it was denying Defendant's motion to dismiss because "discovery on the issue of ownership is needed" and Plaintiff's certificate of registration was "prima facie evidence [of ownership] for jurisdictional purposes." (D.E. 20 at 5.) This Court noted that, "[t]o the extent Plaintiff's certificate of registration contains inaccurate information by stating that the Work was made for hire, there is no evidence that Plaintiff knew this was inaccurate." (*Id.*) *See* 17 U.S.C. § 411(b)(1); *Unicolors, Inc. v. H&M Hennes & Mauritz, L.P.*, 142 S. Ct. 941, 945 (2022); and

[1] This Court summarized Plaintiffs' factual allegations and the procedural history of this case in its Opinion and does not repeat them here. (*See* Opinion at 1–2.)

WHEREAS a party moving for reconsideration of an order of this Court must file its motion within fourteen (14) days after the entry of that order and set "forth concisely the matter or controlling decisions which the party believes the . . . Judge has overlooked." L. Civ. R. 7.1(i). Motions for reconsideration are "extremely limited procedural vehicle(s)" which are to be granted "very sparingly." *Clark v. Prudential Ins. Co. of Am.*, 940 F. Supp. 2d 186, 189 (D.N.J. 2013) (quotation marks omitted). They may only be granted if the moving party shows "(1) an intervening change in the controlling law; (2) the availability of new evidence that was not available when the court [reached its original decision]; or (3) the need to correct a clear error of law or fact or to prevent manifest injustice." *Blystone v. Horn*, 664 F.3d 397, 415 (3d Cir. 2011) (quotation marks and italics omitted). They are "not a vehicle for a litigant to raise new arguments." *CPS MedManagement LLC v. Bergen Reg'l Med. Ctr., L.P.,* 940 F. Supp. 2d 141, 168 (D.N.J. 2013); and

WHEREAS Defendant's Motion for Reconsideration was timely filed 14 days after the Opinion was issued. (D.E. 20, 24.) However, it fails to identify any intervening change in the relevant law, new evidence that was unavailable at the time this Court entered its Order, or an error of fact or law that, if left uncorrected, would result in manifest injustice. *See Blystone*, 664 F.3d at 415. Defendant argues that this Court failed to address the related issues of (1) Plaintiff's ownership in the copyright and (2) the validity of the certificate of registration under 17 U.S.C. § 408(a) and *Kunkel v. Jasin*, 420 F. App'x 198, 200 (3d. Cir. 2011). (D.E. 24-1 at 5–9.) However, this Court has already explained its reasons for finding that "discovery on the issue of ownership is needed," including the lack of evidence, at this stage, that Plaintiff *knew* of any inaccuracies in the certificate of registration, as required to render the certificate legally invalid. (D.E. 20 at 4–5.) *See* 17 U.S.C. §§ 410(c), 411(b)(1); *Unicolors, Inc.*, 142 S. Ct. at 945; and

WHEREAS Defendant relies on *Kunkel*, 420 F. App'x at 200 and *Hacienda Records, LP v. Ramos*, 2016 WL 3543241 at *8 (S.D. Tex. June 29, 2016). (D.E. 24-1 at 6–9.) However, neither of these cases are "controlling decisions" that this Court "overlooked." L. Civ. R. 7.1(i). Defendant did not cite *Hacienda Records* in its brief or reply brief in support of its motion to dismiss, so Defendant cannot argue that this Court overlooked that decision. (D.E. 10, D.E. 16.)[2] This Court did not overlook *Kunkel*, which Defendant cited in its reply brief. (D.E. 16.) However, that decision does not change the analysis here, given the lack of a competing claim to the copyright in this case, and the lack of evidence at this stage that Plaintiff included inaccurate information on the copyright registration "with knowledge that it was inaccurate." 17 U.S.C. § 411(b)(1); *see Unicolors, Inc.*, 142 S. Ct. at 945.[3] For all of these reasons, this Court finds no basis to reconsider its conclusion that discovery is needed to determine whether Plaintiff owned the copyright as a matter of law; therefore,

Defendant's Motion for Reconsideration is **DENIED**. An appropriate order follows.

/s/ Susan D. Wigenton
SUSAN D. WIGENTON, U.S.D.J.

Orig: Clerk
cc: José R. Almonte, U.S.M.J.
Parties

[2] Even if Defendant had cited *Hacienda Records* in its briefs, that case is clearly not "controlling" as it is an unpublished decision from a district court outside this circuit, and it is distinguishable because, here, there is insufficient evidence that Plaintiff knowingly made a "false statement[] of ownership." *Hacienda Records, LP*, 2016 WL 3543241 at *8.

[3] To the extent *Kunkel* conflicts with *Unicolors*, it is superseded by the Supreme Court's decision. In any event, *Kunkel* does not control here, as the critical finding in that case was that the plaintiff "did not have the right to register the copyrights at the time the registrations were submitted to the Copyright Office" because his assets at the time of filing belonged to his bankruptcy estate. *Kunkel*, 420 F. App'x at 200. The facts here are not analogous, as there is no competing claim to the copyright in this case by a bankruptcy estate or any other party. (*See* D.E. 1 ¶¶ 14–17; D.E. 15 ¶¶ 4, 8–10.)